

## **REMARKS**

Reconsideration and allowance are respectfully requested. Applicants submit this Request for Continued Examination (RCE) to prevent further arguments based on the final Office Action and the comments provided in the Advisory Action.

Applicants thank the Examiner for providing such detailed comments in the Advisory Action to enable each party to more fully understand our respective positions. Applicants note that the Advisory Action first asserts that the combination of Masaki et al. (U.S. Patent No. 6,359,309) ("Masaki et al.") with Chiu et al. (U.S. Patent No. 6,233,283) ("Chiu et al.") and Li (U.S. Patent No. 6,275,531) ("Li") is appropriate in that the final Office Action does not combine Chiu et al.'s system with Masaki et al.'s system. Rather, the Advisory Action highlights that the Examiner modifies Li's system with Chiu et al. and apparently separately modifies Li's system with Masaki et al. Therefore, the Advisory Action appears to assert that it is irrelevant whether the one of skill in art would have sufficient motivation or suggestion to combine Chiu et al. with Masaki et al.

Applicants respectfully traverse this analysis and assert that there is no legal support for ignoring the lack of motivation or suggestion to combine the two secondary references of Chiu et al. and Masaki et al. In fact, the MPEP requires just the opposite. Namely, the MPEP §2143.01, Section II states "the test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art, and all the teachings of the prior art must be considered to the extent that they are in analogous arts. Where the teachings of two or more prior art references conflict, the Examiner must weigh the power of each reference to suggest solutions to one of ordinary skill in the art, considering the degree to which one reference might accurately discredit another." (emphasis added) Accordingly, Applicants assert that the legal requirement drawn from this basic articulation of the test for obviousness does not allow for a

wall to be erected between the obvious combination of the primary reference and one secondary reference and the primary reference and an alternate secondary reference. In other words, the analysis that the Examiner sets forth in the Advisory Action is inappropriate given the requirement that the test for obviousness be based on the combined teachings of the references and what they would have suggested to one of ordinary skill in the art. Applicants have analyzed the combined teachings of the references, including the suggestive power of Chiu et al. and whether it is appropriate to combine that reference with the teachings of Masaki et al.

Accordingly, Applicants reassert their previous arguments regarding the insufficiency of the suggestive power of these references to combine Masaki et al. with Chiu et al. Furthermore, Applicants note that the standard by which the decision is made is only by a preponderance of the evidence. Accordingly, Applicants only need to show by a preponderance of the evidence that one of skill in the art would not have sufficient motivation or suggestion to combine these references. In addition to the previous arguments provided, Applicants also submit further arguments while also addressing the Examiner's further comments in paragraph 3 of the Advisory Action.

The Advisory Action notes that Chiu et al. does not prohibit the use of the retransmission of data. The Advisory Action appropriately notes that Chiu et al. references the retransmission of a macro block at a lower priority by encoding the subject macro block into the enhancement layer. This is performed based on a set of criteria identified by the perceptual preprocessor which considered human video perception limitations to determine whether to retransmit lost video data in video packet information. Accordingly, although Applicants have appropriately identified that typical retransmission schemes are introduced by Chiu et al. as failing in a number of respects, such as, the insufficient use of bandwidth, Applicants submit that Chiu et al. does teach a method by which the retransmission of data is performed after analysis by the perceptual

preprocessor. However, this does not change the basic suggestive power of Chiu et al. relative to whether it is obvious to combine that reference with Masaki et al.

For example, additional reasons exist in addition to those set forth in Applicants remarks after the final rejection. For example, in addition to Masaki et al. teaching concepts related to the H.261 standard which one of skill in the art would not have sufficient motivation or suggestion to combine with Chiu et al. or Li., Applicants further note that Masaki et al. focus on quantization control. Masaki et al. focus on providing a video coding device that can suppress delay time so that a moving picture with smooth movement can be displayed on the receiving side even when the amount of generated information rapidly increases due to sudden movement of an object or when transmission throughput varies on a video transmission system using the same object. It is certainly clear that the focus and subject matter of Masaki et al. relates to a suitable quantization control method in this context and selection of error correction codes corresponding to the communication conditions and a video transmission system using these features. See column 9, lines 39-52. Accordingly, Applicants reassert that the focus on the H.261 standard and the focus on a quantization control method does not provide within the teachings of Masaki et al. any suggestive power to combine those teachings with Chiu et al. which relate to retransmission of lost packet transmission information in different layers based on an analysis by a perceptual preprocessor further in connection with its teachings against redundant retransmission of information in an efficient use of bandwidth. While both Masaki et al. and Chiu et al. generally refer to video compression, Applicants first submit that these additional reasons add weight to the scale such that the preponderance of the evidence leans away from there being sufficient motivation or suggestion to combine these references.

Regarding the rejection of claims 8, 34 and 42 under Section 103 which includes the Zhang et al. reference (U.S. Patent No. 6,816,194), Applicants note that the Advisory Action

asserts that the final Office Action does not modify the Masaki et al. system with the system of Zhang et al. Instead, the Advisory Action comments that the teachings of Zhang et al. are used to modify Li's system only. Therefore, the Advisory Action asserts that the combination of references is proper. However, Applicants incorporate that the arguments set forth above noting that there is no support in the MPEP for utilizing citing three or more references and then picking and choosing which two references it is obvious to combine while ignoring arguments against combinations of any other two of the group of cited references. Accordingly, Applicants respectfully submit that the combined teachings of the cited prior art references must be taken into account for their suggestive power and that when an appropriate analysis is done, Applicants respectfully submit that one of skill in the art would not be motivated to combine Zhang et al.'s scalable layer video coding scheme with the teachings of Masaki et al. which do not relate to, suggest or teach such a layered scheme and that one of skill in the art would understand the earlier version of video coding taught by Masaki et al. Accordingly, for these reason, Applicants submit that claims 8, 34 and 42 are patentable and in condition for allowance.

**CONCLUSION**

Having addressed all rejections and objections, Applicants respectfully submit that the subject application is in condition for allowance and a Notice to that effect is earnestly solicited. If necessary, the Commissioner for Patents is authorized to charge or credit the **Law Office of Thomas M. Isaacson, LLC, Account No. 50-2960** for any deficiency or overpayment.

Respectfully submitted,

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